



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 9, 1998

Mr. George C. Kraehe  
Willette, Guerra & Treviño  
3505 Boca Chica Blvd.  
Brownsville, Texas 78521

OR98-1630

Dear Mr. Kraehe:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 116544.

The City of Brownsville received a request for "a copy of Antonia Rodriguez' personnel file." You state that the Brownsville Police Department (the "department") does not object to releasing the requested information. You state that you are concerned that the release of the information may violate Ms. Rodriguez's common-law or constitutional privacy interests. You also state that some of the information may be subject to section 143.089(g) of the Local Government Code.

You raise Local Government Code section 143.089(g), which reads as follows:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

This provision makes confidential any records kept in the department's internal file. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946 (Tex. App.--Austin 1993, writ denied). You do not inform us whether the information submitted to this office is the department's internal file or the civil service file. The documents submitted to this office

contain information concerning what appear to be sustained complaints that resulted in disciplinary actions. If a complaint is (1) sustained and (2) disciplinary action is taken pursuant to chapter 143 of the Local Government Code, section 143.089(a)(2) of that code provides that information about the misconduct must be maintained in a civil service file. Because information about a sustained complaint that resulted in a chapter 143 disciplinary action must be maintained in a section 143.089(a)(2) file and also may be maintained in a section 143.089(g) file, we assume that the city might maintain duplicate information about sustained complaints in both the internal, confidential file and the generally public civil service file. We assume the department complied with the procedural requirement of section 143.089(g) by referring the requestor to the director of the Brownsville Civil Service Commission at the time the request was made. As discussed above, you must keep confidential the section (g) information, if any. For purposes of this ruling, we will assume that the information at issue is maintained in the civil service file.

Section 552.101 excepts from required public disclosure information considered to be confidential by law, including information made confidential by judicial decision. This exception applies to information made confidential by the common-law right to privacy. *Industrial Found. of the S. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information may be withheld under section 552.101 in conjunction with the common-law right to privacy if the information contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and if the information is of no legitimate concern to the public. *See id.*

Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests: (1) an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest that implicates constitutional privacy involves matters outside the zones of privacy. To determine whether the constitutional right to privacy applies, this office applies a balancing test, weighing the individual's interest in privacy against the public right to know the information. *See Open Records Decision No. 455 at 5 (citing Ramie v. City of Hedwig Village, 765 F.2d 490, 492 (5<sup>th</sup> Cir. 1985))*.

We have reviewed the information. We conclude that portions of Ms. Rodriguez's personal statement are protected from public disclosure based on the common-law right to privacy. Those private portions include her financial history, financial obligations and questions 1, 2, and 4 of her medical history.

Section 552.101 also applies to information made confidential by statute. The file contains a peace officer's accident report completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064. The Seventy-fifth Legislature, repealed V.T.C.S. article 6701d, and amended section 550.065 of the Transportation Code concerning the disclosure of accident report information. Act of May 29, 1997, 75th Leg., R.S. ch. 1187, 1997 Tex. Sess. Law Serv. 4575 (Vernon) (to be codified at Transp. Code § 550.065). However, a Travis County district court has issued a temporary injunction enjoining the enforcement of the amendment to section 550.065 of the Transportation Code. *Texas Daily Newspaper Ass'n, v. Morales*, No. 97-08930 (345th Dist. Ct., Travis County, Tex., Oct. 24, 1997) (second amended agreed temporary injunction). A temporary injunction preserves the status quo until the final hearing of a case on its merits. *Janus Films, Inc. v. City of Fort Worth*, 358 S.W.2d 589 (1962). The supreme court has defined the status quo as "the last, actual peaceable, non-contested status that preceded the pending controversy." *Texas v. Southwestern Bell Tel. Co.* 526 S.W.2d 526, 528 (Tex. 1975). The status quo of accident report information prior to the enactment of S.B. 1069 is governed by section 47 of article 6701d, V.T.C.S.<sup>1</sup>

Section 47(a) makes accident reports confidential. Section 47(b)(1) provides that:

The Department or a law enforcement agency employing a peace officer who made an accident report *is required to release a copy of the report* on request to:

....

(D) a person who provides the Department or the law enforcement agency with two or more of the following:

- (i) the date of the accident;
- (ii) the name of any person involved in the accident; or
- (iii) the specific location of the accident

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<sup>1</sup>Although the Seventy-fourth Legislature repealed and codified article 6701d as part of the Transportation Code, the legislature did not intend a substantive change of the law but merely a recodification of existing law. Act of May 1, 1995, 74th Leg., R.S., ch. 165, §§ 24, 25 1995 Tex. Sess. Law Serv. 1025, 1870-71. Furthermore, the Seventy-fourth Legislature, without reference to the repeal and codification of V.T.C.S. article 6701d, amended section 47 of article 6701d, V.T.C.S., relating to the disclosure of accident reports. Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414. Because the repeal of a statute by a code does not affect an amendment of the statute by the same legislature which enacted the code, the amendment is preserved and given effect as part of the code provision. Gov't Code § 311.031(c). Thus, the amendment of section 47 of article 6701d, V.T.C.S. is the existing law regarding the availability of accident report information, and may be found following section 550.065 of the Transportation Code. *See also* Act of May 27, 1995, 74th Leg., R.S., ch. 894, § 1, 1995 Tex. Sess. Law Serv. 4413, 4414.

V.T.C.S. art. 6701d, § 47(b)(1) (emphasis added). Under this provision, a law enforcement agency "is required to release" a copy of an accident report to a person who provides the law enforcement agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with the requisite information. Thus, the department must not release the report. Gov't Code § 552.101.

The file contains tax return information. This information is deemed confidential by federal law. 26 U.S.C. §§ 6103, 7213; *see* Open Records Decision No. 600 (1992).

Section 552.117 of the Government Code excepts from disclosure the home address, home telephone number, social security number, and information about family members of "a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code." We have no information about whether Ms. Rodriguez is a peace officer as defined in article 2.12 of the Code of Criminal Procedure. Assuming Ms. Rodriguez is currently a peace officer as defined in article 2.12, the city must withhold from public disclosure the information covered by section 552.117. The section 552.117 information may also be withheld from public disclosure if Ms. Rodriguez has elected to keep that information confidential in accordance with section 552.024 of the Government Code. *See* Gov't Code § 552.117(1). The exception also applies to a police officer's former addresses. *Cf.* Open Records Decision No. 622 (1994) (holding public employees' former home addresses and telephone numbers excepted from disclosure based on Government Code section 552.117(1)(A)).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Hastings  
Assistant Attorney General  
Open Records Division

KHH/mjc

Ref.: ID# 116544

Enclosures: Submitted documents

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